Long Island Association for AIDS Care, Inc. *and* Marcus Acosta. Case 29–CA–149012

June 14, 2016

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

On August 26, 2015, Administrative Law Judge Kenneth W. Chu issued the attached decision. The Respondent filed exceptions with supporting argument. The General Counsel filed limited exceptions with supporting argument, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] as modified and to adopt the judge's recommended Order as modified and set forth in full below.[3]

1. The judge found that the Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining a confidentiality statement that employees would reasonably construe to prohibit them from discussing wages or other terms and conditions of employment with employees or nonemployees and the media.[4] See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004). We affirm the judge for the reasons explained in his decision.[5]

2. The judge also found that the Respondent violated Section 8(a)(1) by threatening to discharge and then discharging employee Marcus Acosta.[6] We agree. As detailed in the judge's decision, in early March 2015, the Respondent instructed Acosta to sign the confidentiality statement. Acosta signed, but he also highlighted and underlined the sections that he disagreed with and wrote the words "under duress" three times next to his signature. On March 24, Robert Nicoletti, the Respondent's Director of Human Resources, summoned Acosta to a meeting, gave him a clean copy of the confidentiality statement, and demanded that he "sign or get fired." When Acosta again signed with the words "under duress," Nicoletti told him that he "just terminated his own employment." Because maintaining the confidentiality

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's conclusions of law to conform to the violations found.

[3] In accordance with our decision in *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall modify the judge's recommended tax compensation and Social Security reporting remedy. We shall modify the judge's recommended Order and substitute a new notice to reflect this remedial change and to conform to the violations found and the Board's standard remedial language.

The General Counsel excepts to the judge's refusal to order the Respondent to reimburse Acosta for search-for-work and work-related expenses regardless of whether he received interim earnings in excess of these expenses, or at all, during any given quarter or during the overall backpay period. We deny the exception. As the judge noted, awarding such expenses would require a change in Board law, and we are not prepared at this time to deviate from our current remedial practice.

[4] There are no exceptions to the judge's finding that the Respondent violated the Act by promulgating the confidentiality statement.

[5] In affirming the judge, we do not rely on his citation to *Hyundai America Shipping Agency, Inc.*, 357 NLRB 860, 871 (2011), enf. denied in relevant part 805 F.3d 309 (D.C. Cir. 2015), or *Brighton Retail, Inc.,* 354 NLRB 441 (2009), which was issued by a two-member Board and later invalidated by the Supreme Court. See *New Process Steel v. NLRB*, 560 U.S. 674 (2010).

Member Miscimarra concurs in the finding that the Respondent violated Sec. 8(a)(1) by maintaining confidentiality requirements that prohibited employees from disclosing "salaries, contents of employment contracts, [and] . . . staff addresses and phone numbers" and from engaging in the "personal use of such information," and that also prohibited employees from disclosing to "any media source" information "regarding [employees'] employment at LIAAC, the workings and conditions of LIAAC, or any . . . staff member." However, for the reasons set forth in *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 7–24 (2016) (Member Miscimarra, concurring in part and dissenting in part), Member Miscimarra disagrees with the test applicable to facially neutral work requirements that the Board adopted in *Lutheran Heritage Village-Livonia*, 343 NLRB at 647 (finding that facially neutral work rules are unlawful if "employees would reasonably construe the language to prohibit Section 7 activity"). Member Miscimarra would instead apply the balancing test he described in *William Beaumont Hospital*, slip op. at 9, by considering both the adverse impact of the requirements on Sec. 7 activity and any legitimate justifications for maintaining those work requirements. Applying this standard, Member Miscimarra believes the Respondent's confidentiality requirements violate Sec. 8(a)(1) because they encompass disclosures that are central to many types of Sec. 7 activity, and this adverse impact outweighs any legitimate justifications. For example, even though legitimate reasons exist to restrict the public disclosure of employee addresses and phone numbers, the Respondent's confidentiality requirements prohibit employees from engaging in the "personal use of such information," which could include a prohibition on employees contacting one another to engage in protected concerted activity. In the circumstances presented here, Member Miscimarra finds that the confidentiality requirements are unsupported by reasonable justifications, and their adverse impact on Sec. 7 activity warrants a finding that the requirements violate Sec. 8(a)(1). Id.; see also *Alternative Entertainment*, 363 NLRB No. 131, slip op. at 4 fn. 7 (2016) (Member Miscimarra, concurring in part and dissenting in part).

[6] There are no exceptions to the judge's finding that the Respondent violated the Act by threatening Acosta.

statement was unlawful, discharging Acosta for refusing to agree to the unlawful confidentiality statement also violated Section 8(a)(1). See *Keiser University*, 363 NLRB No. 73, slip op. at 1, 7 (2015) (unlawful to discharge employee for refusing to sign unlawful arbitration agreement); cf. *Denson Electric Co.*, 133 NLRB 122, 129, 131 (1961) (unlawful to discharge employees for refusing to accept unlawful condition of employment).

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 2(b).

"(b) Threatening to discharge and discharging Marcus Acosta on March 24, 2015, for refusing to agree to its overbroad and unlawful confidential policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or nonemployees and the media."

ORDER

The National Labor Relations Board orders that the Respondent, Long Island Association for AIDS Care, Inc., Hauppauge, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and/or maintaining a rule prohibiting employees from discussing their wages and other terms and conditions of their employment with employees or nonemployees and the media.

(b) Threatening to discharge or discipline employees for refusing to agree to an overbroad and unlawful confidentiality policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or nonemployees and the media.

(c) Discharging employees for refusing to agree to an overbroad and unlawful confidentiality policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or nonemployees and the media.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind paragraphs 3 and 4 from the Confidentiality Statement, or revise them to make clear that they do not prohibit employees from discussing their wages and other terms and conditions of their employment with nonemployees and the media.

(b) Notify all current and former employees who were required to sign acknowledgements regarding the Confidentiality Statement that paragraphs 3 and 4 have been rescinded or revised and, if revised, provide them a copy of the revised policy.

(c) Within 14 days from the date of this Order, offer Marcus Acosta full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed.

(d) Make Marcus Acosta whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision.

(e) Compensate Marcus Acosta for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(f) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharge of Marcus Acosta, and, within 3 days thereafter, notify him in writing that this has been done and that his unlawful discharge will not be used against him in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at the Respondent's facility at 60 Adams Avenue, Hauppauge, New York, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2015.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. June 14, 2016

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate and/or maintain a rule prohibiting employees from discussing their wages and other terms and conditions of their employment with employees or nonemployees and the media.

WE WILL NOT threaten to discharge or discipline employees for refusing to agree to an overbroad and unlawful confidentiality policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or nonemployees and the media.

WE WILL NOT discharge employees for refusing to agree to an overbroad and unlawful confidentiality policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or nonemployees and the media.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind paragraphs 3 and 4 from the Confidentiality Statement, or revise them to make clear that they do not prohibit employees from discussing their wages and other terms and conditions of their employment with nonemployees and the media.

WE WILL notify all current and former employees who were required to sign acknowledgements regarding the Confidentiality Statement that paragraphs 3 and 4 have been rescinded or revised and, if revised, provide them a copy of the revised policy.

WE WILL, within 14 days from the date of the Board's Order, offer Marcus Acosta full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed.

WE WILL make Marcus Acosta whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL compensate Marcus Acosta for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discharge of Marcus Acosta, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that his unlawful discharge will not be used against him in any way.

LONG ISLAND ASSOCIATION FOR AIDS CARE, INC.

The Board's decision can be found at www.nlrb.gov/case/29–CA–149012 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor

Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Brent Childerhose, Esq., for the General Counsel.
David Ehrlich, Esq. (Stagg, Terenzi, Confusione & Wabnik, LLP), for the Respondent.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried in Brooklyn, New York, on July 27, 2015 pursuant to a complaint issued by Region 29 of the National Labor Relations Board (NLRB) on May 26, 2015.[1] The Long Island Association for AIDS Care, Inc. (Respondent) timely filed an answer denying the material allegations in the complaint (GC Exh. 1).[2]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a not-for-profit and non-union organization, has been engaged in providing services for HIV/AIDS prevention and care at its facility in Hauppauge, New York, where it annually derive revenues valued in excess of $250,000 in the course and conduct of its operations and has purchased and received goods and services at its facility valued in excess of $250,000. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that the Respondent promulgated and maintained a confidentiality statement that required employees to sign that restricts their rights to discuss wages and other terms and conditions of employment in violation of Section 8(a)(1) of the National Labor Relations Act (Act). The complaint states that the Respondent threatened employee Marcus Acosta for refusing to agree with the terms of the confidentiality statement and discharged him on March 24 for asserting his rights under the Act. The General Counsel maintains that the following portions of the confidentiality statement (GC Exh. 2 and 3) restrict the Section 7 rights of employees in violation of the Act

> Para 3: Employees must regard all non-public information intended for internal purposes to be an agency trust. This includes, but is not limited to, administrative information such as salaries, contents of employment contracts, identities of agency contributors, staff addresses and phone numbers, internal budgets, and information discussed at internal meetings. The disclosure or personal use of such information or the removal from the agency of documents containing this information is strictly prohibited.
>
> Para 4: No employee will agree to be interviewed by any media source, or answer any questions from any media source regarding their employment at LIAAC, the workings and conditions of LIAAC, or any client, volunteer or staff member, either on or off the record, unless specifically requested to do so by the President/CEO or any of the Vice Presidents. All requests for interviews must be referred to the President/CEO or any of the Vice Presidents.
>
> Employees will be instructed in the following situations. Staff shall not:
>
> - Discuss the content of such documents or computer data with any person unless that person has authorized access and the need to know the information discussed…

Marcus Acosta (Acosta) was hired on February 24, 2014 as an outreach specialist and was responsible, among other job duties, for conducting surveys and speaking with people in select communities regarding drug use and mental illness. Shortly after being hired, Acosta was selected as a CDC prevention specialist, and was responsible for outreaching to men having sex with other men and high risk heterosexuals and drug users. He conducted HIV testing, counseling and referral on his job. Acosta's supervisor was Sophia Noel and her supervisor was Michelle Keogh (Tr. 11–13, 37, 38).

Acosta testified that when he was hired, the Respondent requested that he read, agree, and abide by the confidentiality statement with the portions noted above and to sign at the bottom of the statement. Acosta signed the policy statement on March 14, 2014 without protest.

During the course of his employment with the Respondent, Acosta engaged in discussions with coworkers about their wages and the conditions of employment. Acosta testified that a newspaper article he noticed in the employees' break room in November 2014 perked his attention. Acosta stated that the news article mentioned the findings of an investigation regarding the misappropriation and financial improprieties of funds and expenditures by the Respondent's director (Gail Barouh). Acosta testified that his coworkers were discussing the article in the break room because the allegations of financial improprieties by the organization have been on-going for years. Acosta recalled discussing with one employee who mentioned to him that the Respondent had misappropriated the cost-of-living adjustment (COLA) benefits. Acosta said that when he re-

[1] All dates are in 2015 unless otherwise indicated.

[2] The exhibits for the General Counsel are identified as "GC Exh." and Respondent's exhibits are identified as "R Exh." The closing briefs are identified as "GC Br." and "R. Br." for the General Counsel and the Respondent, respectively. The hearing transcript is referenced as "Tr."

turned to his office, he noticed a letter from Barouh, which was placed on the desks of all employees, explaining what had occurred and that the Respondent had resolved all the issues mentioned in the news article. A fundraising packet was placed alongside with the Barouh letter which Acosta understood was his assigned task to raise money in the community for the organization. Based upon his reading of the news article, Acosta said he was uncomfortable asking community people for money when he was uncertain that the money would actually go back to the community. Acosta approached his supervisor, Noel, and told her that he was uncomfortable asking people for money. Acosta had not fundraised for the Respondent prior to this request. He also stated he wanted to make sure the money raised would be used in the community. According to Acosta, Noel told him not to worry about it. Acosta, dissatisfied with this response, then approached Keogh with the same concern. It is unclear from Acosta's testimony as to what occurred when he met with Keogh (Tr. 13–18). Acosta was not required to fundraise and was never disciplined by the Respondent for his discussion with Noel regarding his refusal to fundraise (Tr. 49, 50).

Acosta testified to a CDC group meeting in February or early March 2015 with Noel and Keogh.[3] At the end of the meeting, Acosta approached the two supervisors and wanted to know how wage increases are allocated by the Respondent and whether employees are entitled to COLA benefits. According to Acosta, the supervisors did not know the answers and directed him to talk with Robert Nicoletti, the former director of the human resources department (Tr. 18, 19). Acosta met with Nicoletti and told him that other employees were concerned and emotional about not receiving a pay raise for years and he wanted to know how raises are allocated. Acosta testified that the employees were reluctant to discuss their wages with management for fear of retaliation. Acosta was told by Nicoletti that wage increases were based upon performance evaluations by the supervisors and upon a change in job titles. Nicoletti also told Acosta that he was a good employee and "he could go far" if he did his work. Acosta was not informed by Nicoletti as to how and when COLA benefits were allocated (Tr. 19–21; 49–51).

In March, the employer requested all employees to again read, agree, abide and sign the confidentiality policy statement. Acosta stated he was more cognizant this time of the contents of the confidentiality statement prohibiting the disclosure of wages after discussing wages and COLAs with other employees. Acosta did not object to the first paragraph of the statement policy regarding the maintenance of confidential health information but was upset with paragraphs three and four that prohibited employees from discussing wages or speaking to the media about wages. He stated he would not be silenced about discussing salaries with other employees or being prohibited from talking to the media. This time, Acosta signed the statement, but highlighted and underlined the sections that he found offensive and wrote the words "under duress" three times next to his signature[4] (Tr. 21–28).

On March 20, Acosta attended a regularly scheduled meeting with supervisor Noel. During this meeting, Acosta mentioned that other employees had requested and received raises. Acosta inquired of Noel about getting a raise since the timing was at his 1 year anniversary date of employment. According to Acosta, Noel laughed and responded, "Oh now you're asking for a raise? It seems that everyone is asking for a raise." According to Ascosta, Noel also said that his job performance was a "big improvement since November" and she would look into giving him a raise (Tr. 29, 30). On March 24, Acosta attended another scheduled meeting with Noel to discuss his work plans. Acosta testified that towards the end of their meeting, he was summoned to meet with Nicoletti. Acosta was not informed as to the purpose of the meeting. Acosta attended the second meeting and, with trepidation, asked Nicoletti if everything was alright and whether he was being terminated (Tr. 31). According to Acosta, Nicoletti responded "No, why would you get fired?" (Tr. 31.). During this time, another official from human resources and the chief program officer, Ray Ward (Ward), joined the meeting with Acosta and Nicoletti.

According to Acosta, Nicoletti began the meeting by asking Acosta, "Marcus, this is a yes or no conversation, there is no room for discussion" (Tr. 31, 32). Acosta was then handed the confidentiality statement by Nicoletti and was asked if there was anything that Acosta did not understand about the statement. Acosta testified

> I said yes, I don't understand why I have to sign a form that says that I cannot speak about employee wages and executive salaries or speak to the media when I believe that I have those rights (Tr. 32).

Acosta testified that Nicoletti became upset and said "sign or get fired, sign or get fired" (Tr. 32). Acosta said he signed the form without any portions being highlighted or underlined as he did earlier, but did hand-wrote "under duress" three times near his signature (GC Exh. 2; Tr. 31). Acosta stated that Nicoletti yelled ". . . you just terminated yourself!" after seeing the words "under duress" on the confidentiality statement (Tr. 32).

Discussion and Analysis

a. Credibility

The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305

[3] The transcript mistakenly identified the Centers for Disease Control (CDC) as CVC.

[4] Acosta testified that he requested a copy of his signed confidentiality statement with the highlighted portion and his remark "under duress" but was refused a copy by his supervisor. Neither the original nor a copy was made available during the hearing.

(2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, above.

Nicoletti did not testify at the hearing and the General Counsel argues that an adverse inference should be drawn (GC Br. at 6).[5] It is unnecessary to draw an adverse inference for his nonappearance inasmuch as the credible testimony provided by Acosta stands uncontradicted by the Respondent and I would accept as to what had occurred consistent with that testimony and the corroborating evidence of record. Ward testified on behalf of the Respondent and supported the fact that Acosta was discharged for writing the words "under duress" three times near his signature. Ward stated that when Acosta wrote "under duress" on the confidentiality statement, ". . . Robert (Nicoletti) told him he just terminated his own employment" (Tr. 88). Ward insisted that Acosta terminated his own employment (by writing the words "under duress" next to his signature) and was not discharged (Tr. 92, 93).

b. Applicable Legal Standard

An employer violates Section 8(a)(1) when it promulgates and maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. *Lutheran Heritage Village-Livonia*, 25 343 NLRB 646, 646–647 (2004); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). Where the rule is likely to have a chilling effect on Section 7 rights, the maintenance of the rule is an unfair labor practice, even absent evidence of enforcement. In determining whether a challenged rule is unlawful, however, the rule must be given a reasonable reading; particular phrases must not be read in isolation, and improper interference with employee rights must not be presumed. The Board's analytical framework for determining whether the maintenance of a work rule violates Section 8(a)(1) of the Act was set forth in *Lutheran Heritage Village-Livonia*

> In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7. If it does, we will find the rule unlawful. If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

The General Counsel argues that employees would reasonably construe the language in the confidentiality statement to prohibit Section 7 activity (GC Br. at 4, 5). The Respondent argues that none of the policies explicitly restrict protected, concerted activities and could not be reasonably construed by employees to restrict their rights to discuss wages and working conditions (R. Br. at 13).

c. The Respondent's Confidentiality Statement Violates Section 8(a)(1) of the Act

Section 7 of the Act guarantees employees the right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." In turn, Section 8(a)(1) of the Act makes it unlawful for an employer to "interfere with, restrain, or coerce employees in the exercise of [those] rights." See, *Brighton Retail Inc.*, 354 NLRB 441, 447 (2009).

The test for evaluating if the employer's rule violate Section 8(a)(1) is "whether the statements or conduct have a reasonable tendency to interfere with, restrain or coerce union or protected activates." *Hills & Dales General Hospital*, 360 NLRB No. 70 at slip op. at 5. As with all alleged Section 8(a)(1) violations, the judge's task is to "determine how a reasonable employee would interpret the action or statement of her employer…and such a determination appropriately takes account of the surrounding circumstances." *The Roomstore*, 357 NLRB 1690, 1690 fn. 3 (2011).

The confidentiality statement at issue prohibits employees from making an unauthorized disclosure of

> All non-public information intended for internal purposes to be an agency trust. This includes, but is not limited to, administrative information *such as salaries, contents of employment contracts* (emphasis added), identities of agency contributors, staff addresses and phone numbers, internal budgets, and information discussed at internal meetings.

Disclosure of such information could subject an employee with disciplinary action to include suspension and termination for violating the confidentiality statement.

Upon my review, I find that the confidentiality statement is facially invalid. The legitimate interest of an employer in protecting its confidential business, the privacy of its clients, and health-related and customer information has long been recognized under Board law. However, an employer unlawfully intrudes into its employees' Section 7 rights when it prohibits employees, without justification, from discussing among themselves their wages and other terms and conditions of employment. See *Hyundai America Shipping Agency Inc.,* 357 NLRB 860, 880 (2011) (employer violated Sec. 8(a)(1) by maintaining a provision in its employee handbook stating that "any unauthorized disclosure of information from an employee's personnel file is a ground for discipline, including discharge"); *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217 (1976) (employer violated Sec. 8(a)(1) of the Act by promulgating and maintaining a rule forbidding employees from discussing their wages at any time under penalty of dismissal); *Jeannette Corp. v. NLRB*, 532 F.2d 916 (3d Cir. 1976) (employer violated Sec. 8(a)(1) by maintaining an unqualified rule prohibiting employees from discussing their wage rates); *Highland Superstores*, 301 NLRB 191 (1991) ("An employer violates Section 8(a)(1)

[5] Nicoletti was no longer employed by the Respondent at the time of the hearing.

by forbidding employees to discuss wages with other employees"); *Love Culture Inc*., 362 NLRB No. 145 (2015).

While I find that the Respondent apparently sought to prevent the disclosure of health-related, proprietary and financial information, I also find that the Respondent went beyond to include "salaries and contents of employment contracts," which would mean that disclosure of various kinds of information about employees, such as wages, would also be prohibited. In *Flex Frac Logistics*, 358 NLRB 1131 (2012), affd. in relevant part, 746 F.3d 205 (5th Cir. 2014), the Board restated established precedent that ". . . nondisclosure rules with very similar language are unlawfully overbroad because employees would reasonably believe that they are prohibited from discussing wages or other terms and conditions of employment…an activity protected by Section 7 of the Act," citing *Hyundai America Shipping Agency, Inc.*, 357 NLRB 860, 871 (2011); also *Lily Transportation Corp.*, 362 NLRB No. 54, slip op. at 6 (2015).

I also find no exceptions to the confidentiality statement which would permit employees to discuss wages, compensation or any other specific terms and conditions of employment. It serves little comfort to the Respondent to argue that wages are public information and the confidentiality statement only prohibits the disclosure of non-public information. The second sentence of that paragraph states ". . . but is not limited to, administrative information such as salaries, contents of employment contracts.." The confidentiality statement therefore allows employees to reasonably assume that it pertains to—among other things—certain protected concerted activities, such as communications about wages and contents of employment contracts that are critical of the Respondent's treatment of its employees. By including non-disclosure of "wages and contents of employment contracts" in its confidential policy, the Respondent leaves to the employees the task of determining what is permissible and ". . . speculate what kind of information disclose may trigger their discharge." *Flex Frac*, above at slip op. at 10.[6]

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining a rule prohibiting employees to discuss wages among themselves and to speak with the media that has a reasonable tendency to inhibit employees' protected activity.[7]

d. The Respondent Threatened and Discharged Acosta in Violation of Section 8(a)(1) of the Act

Discipline imposed pursuant to an unlawfully overbroad company policy violates the Act in those situations in which an employee violated the policy by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act. *Continental Group, Inc*., 357 NLRB 409, 411–414 (2011); *Double Eagle Hotel & Casino*, 341 NLRB 112 at fn. 3 (2004). The General Counsel alleges that the Respondent violated Section 8(a)(1) threatening Acosta and discharging him on March 24 because he asserted his rights under the Act.

In March, Acosta was instructed to sign the confidentiality statement. Acosta highlighted and underlined the sections of the statement that he found offensive and signed with the remark "under duress." Apparently, the Respondent found this inappropriate and Nicoletti summoned Acosta to a meeting on March 24 to discuss the confidentiality statement. Nicoletti told Acosta that this was a "yes or no conversation" and proceeded to ask Acosta what he did not understand about the statement. After Acosta explained that the statement prohibited him and other employees from discussing wages and benefits among themselves and with the media, Nicoletti demanded at least two times that Acosta "sign or get fired."

Ward was present at the March 24 meeting and testified that the purpose of the meeting was to have Acosta signed the confidentiality statement (Tr. 86). Ward said that the confidentiality statement was to protect the organization from employees disclosing sensitive HIV information of patients and financial information from donators and sponsors of the organization's programs (Tr. 87). According to Ward, Acosta insisted that he would talk with whomever he wants to, but agreed to sign the document (Tr. 87, 88). However, Acosta again signed the confidentiality statement with the penned in remark "under duress." Ward said that Nicoletti then told Acosta that he ". . . just terminated his own employment" (Tr. 88).

The Respondent argues that Acosta was not engaged in protected, concerted activity through his objection to the confidentiality statement. The Respondent states that Acosta did not speak to any other employee about the confidentiality statement and no evidence was presented that other employees objected to the confidentiality statement or even knew that Acosta had objected to the statement. The Respondent relied on the Board's findings in *Meyers I and II* for the proposition that an employee acting alone in complaining about safety issue, without discussing the issue with, or enlisting the support of the other employees did not engage in concerted activities (R. Br. at 6–9) (*Myers Indus. Inc., v. Prill* [*Myers I*], 268 NLRB 493, 497 (1984); *Myers II*, 281 NLRB 883 (1986).

I find that Acosta had engaged in concerted activity, though the General Counsel did not specifically argue this contention in his brief. Contrary to the Respondent's assertions, I credit Acosta's unrebutted testimony that he held a reasonable belief that federal and local grants to the Respondent, a not-for-profit organization, were being improperly diverted and misused by a management official according to a news article he read in November 2014. Acosta discussed the contents of the article with coworkers and they also expressed the same concerns, especially since their wages and cost-of-living increases are dependent on the grants and the same money was allegedly being used for excessive and improper expenditures. Acosta brought their concerns to his supervisors, Noel, Keogh and Nicoletti. Acosta specifically did not want to identify the employees regarding their wage complaints, but did act as their

[6] "Board law is settled that ambiguous employer rules-rules that reasonably could be read to have a coercive meaning-are construed against the employer." *Flex Frac*, above, at 2.

[7] The Board has also consistently held that company rules prohibiting employees from communicating with the media is also a violation of the Act. *HTH Corp*. 356 NLRB 1397 at 1422, 1423 (2011); *Double Eagle*, above at 115 (The Board held that a communication rule that prohibits the dissemination of confidential information concerning the company by any of its employees to non-employees without the respondent's approval violated the Act).

spokesperson. Acosta's performance evaluation also noted that Acosta often spoke about wages being unfair to the employees and wanted to know how raises are doled out (R. Exh. 6). As such, I find that Acosta by seeking to initiate or induce group action with coworkers and by bringing group complaints to the attention of management engaged in concerted activities consistent with *Meyers Industries, Inc.,* above.

Moreover, I also find that since the confidentiality statement is facially invalid in prohibiting discussion amongst employees about compensation, the comments made by Acosta to his supervisors regarding his wages and a request for a raise are protected, even if not shown to be concerted. *Double Eagle Hotel & Casino*, 341 NLRB 112 (2004). Since the aforesaid policy was invalid on its face, it was not necessary for the General Counsel to demonstrate that it was illegally motivated, discriminatorily enforced, or even enforced at all. *Congoleum Industries*, 197 NLRB 534, 539 (1972); *Lexington Metal Products Co.*, 166 NLRB 878 (1967); *Farah Manufacturing Co.*, 187 NLRB 601, 602 (1970). The Board has long adhered to and applied the principle that discipline imposed pursuant to an unlawfully overbroad rule is unlawful (the "*Double Eagle* rule"). See, e.g., *Double Eagle*, 341 NLRB at 112 fn. 3; *Saia Motor Freight Line*, 333 NLRB 784, 785 (2001); *Opryland Hotel*, 323 NLRB 723 (1997); *A.T. & S.F. Memorial Hospitals*, 234 NLRB 436 (1978); *Miller's Discount Dept. Stores*, 198 NLRB 281 (1972), enfd. 496 F.2d 484 (6th Cir. 1974). The Board has made clear under the Double Eagle rule where an employee is discharged for violating an unlawful rule, the conduct is protected, even if not concerted. As the Board stated in *Continental Group,* above, slip op. at 4

> Finally, there are situations in which an employer disciplines an employee pursuant to an overbroad rule for conduct that touches the concerns animating Section 7 (e.g., conduct that seeks higher wages) but is not protected by the Act because it is not concerted. In such situations, it cannot be said that the employee's conduct would be protected in the absence of a lawful employer rule… However, in comparison to the situation involving employee conduct that is neither for mutual aid and protection nor concerted (e.g., sleeping on the employer's premises while off duty), there is a much greater risk that employees would be chilled in the exercise of their Section 7 rights. That is, the "chilling effect" rationale for the *Double Eagle* rule applies to a greater extent when an employee is disciplined for conduct that is "protected" but not "concerted." For this reason, we are convinced that application of the *Double Eagle* rule in such instances is appropriate and necessary to fully effectuate the rights guaranteed by Section 7 of the Act.

According to Ward, when Nicoletti saw that Acosta signed the confidentiality statement with the penned in remark "under duress," Acosta was immediately discharged. Since I have concluded that the confidentiality statement for which Acosta was discharged was unlawful, it follows that his discharge was also unlawful as alleged in the complaint.

An employer can nevertheless avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that the employee's conduct actually interfered with the employee's own work or that of other employees or otherwise actually interfered with the employer's operations, and that the interference, rather than the violation of the rule, was the reason for the discipline. The employer bears the burden of asserting this affirmative defense and establishing that the employee's interference with production was the actual reason for the discipline. *Continental Group*, above slip op. at 4.

The Respondent asserts two affirmative defenses in its answer for Acosta's discharge, to wit: 1) Acosta resigned his employment and was not discharged; and 2) Acosta would have been otherwise discharged due to his erratic conduct prior to and during the alleged incident of March 24, including his irrational call to the police (see, answer pars.16 and 17). The Respondent also argues that Acosta was discharged when he insisted on signing the confidentiality statement with the remark "under duress" (R. Br. at 12).

The Respondent's first defense is without merit. The record shows and the Respondent conceded and I find that Acosta was discharged (see, R. Br. at 5). The Respondent next argues that Acosta had performance problems and that his constant "pricking" of management was degrading the morale of the workplace (Tr. 34, 35, 68). Ward testified that Acosta stated that he was being hampered in his work because the Respondent refused to provide him with more information regarding a recently reported financial audit of the organization (R. Exh. 7). Ward said that the contents of the audit did not affect Acosta's ability to perform because he was already having performance problems prior to the issuance of the audit report. The record shows that Acosta had time management issues in completing his assigned tasks and for not submitting his work reports. His performance evaluations also noted an incident of insubordination for refusing an assignment (R. Exhs. 1–6). Ward said that he noticed "negativity" in Acosta's performance since November 2014 and that Acosta was very difficult to supervise, but it was not his place to recommend Acosta's dismissal (Tr. 84–86). Ward further testified that Acosta acted erratic and irrational in calling 911 after he had asked for his job back and Nicoletti refused to rescind his termination. When the 911 operator answered if the call was an emergency, Acosta responded "no" and terminated the call (Tr. 33, 67, 88, 89).

In my opinion, Ward's testimony regarding Acosta's poor performance and negative attitude towards his job is inconsistent with the record. Noel suggested that Acosta focus on his work and told him to try and ". . . weed out negativity that he is absorbing amongst certain peers" (R Exh. 6 at 2). Noel did not state in her evaluation of Acosta that his insistence on discussing wages, COLA benefits and raises was disruptive to the organization's operations. Rather, Noel believed that it was Acosta's work performance that has been adversely affected from the *negativity of his coworkers*. Obviously, this statement by Noel is inconsistent with Ward's assertion that Acosta was the employee who had the negative attitude. Ward's belief that Acosta was disruptive and negative is also inconsistent with Acosta's credible testimony that Noel thought his work performance had improved by late February and that Noel would consider him for a raise (Tr. 31).

Additionally, the timing of Acosta's discharge immediately after Nicoletti saw the signed confidentiality statement with the

remark "under duress" is strong circumstantial evidence that Acosta was discharged for not abiding with an unlawful policy, as well as a discriminatory motive on the part of Nicoletti. See, e.g., *Reno Hilton Resorts v. NLRB*, 196 F.3d 1275, 1283 (D.C. Cir. 1999); *Hall v. NLRB*, 941 F.2d 684, 688 (8th Cir. 1991). The fact that Acosta's insistence on signing the confidentiality statement with the remark "under duress" annoyed management officials or coworkers does not render his action unprotected. *Ryder Transportation Services*, 341 NLRB 761 (2004).

I find that the Respondent's vague and pretextual explanation that Acosta was negative and lowering the morale of coworkers is inconsistent with Noel's assessment that Acosta's job performance had improved by March and it was the negativity of his coworkers that adversely affected his performance provides even stronger evidence of discriminatory motivation. See *All Pro Vending,* 350 NLRB 503, 508 (2007); *Rood Trucking Co.,* 342 NLRB 895, 897 (2004); *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 230 (D.C. Cir.1995) (pretextual explanation warrants inference that employer desires to conceal an unlawful motive) (quoting *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966)). Although the Respondent supervisors gave Acosta some indication that they were unsatisfied with his work in late February, they did not recommend his discipline or discharge. On March 24, Acosta was informed of his improved job performance at his supervisory meeting with Noel, but discharged moments later at his meeting with Nicoletti, further illuminating the fact that the proffered reason for discharge as pretextual and actually attributable to Acosta's complaints regarding compensation.[8]

For all these reasons, I find and conclude that the Respondent's discharge of Acosta violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has violated Section 8(a)(1) by:

(a) Since March 2015, promulgating and maintaining an overbroad confidential policy statement prohibiting employees from discussing wages or other terms and conditions of employment with employees or non-employees and the media.

(b) Threatened and discharged Marcus Acosta on March 24, 2015, for violating its overbroad and unlawful confidential policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or non-employees and the media.

(c) By the conducted described in paragraphs (a) and (b), the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[8] With regard to the alleged erratic call to 911, I find Acosta's action not unreasonable under the circumstances. I would credit Acosta's testimony that he was extremely upset with his discharge and acted on impulse. Acosta then realized calling 911 was against his better judgment and informed the 911 operator that it was not an emergency and ended the call (Tr. 66, 67).

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, I shall order the Respondent to offer Marcus Acosta full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other employee emoluments, rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, the Respondent must compensate Acosta for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).[9]

I also shall order the Respondent to remove from its files any references to the unlawful discharge of Acosta and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

[9] The General Counsel's brief argues that Acosta be reimbursed for search-for-work and work-related expenses regardless of whether he received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel makes a strong argument that reimbursement is appropriate under the Act for such search-for-work and work related expenses. I would note that all remedial relief flows from the simple premise that a victim of discrimination should be as nearly as possible be placed in the position he or she would have been in but for the prohibited discrimination. *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975). Compensatory damages consist of a wide variety of relief including pecuniary and nonpecuniary damages. Pecuniary damages are intended compensation for out-of-pocket expenses incurred as a result of the employer's unlawful action and may include job-hunting, stationary and postage, telephone expenses, resume services, fees referral, costs of transportation interviewing for jobs and other job search fees. The 1991 Civil Rights Act made available compensatory damages in employment discrimination cases and such damages are intended to compensate a victim of discrimination for losses or suffering caused by the discriminatory act. *Carey v. Piphus*, 435 U.S. 247, 254 (1978). Compensation for similar out-of-pocket work related expenses for victims of unfair labor practices under the Act would not be unreasonable, and I would note that the backpay remedy under Title VII of the Civil Rights Act of 1964 was in fact modeled on the backpay provisions of the NLRB Act and its backpay remedy is a "make whole" remedy. *Albemarle* at 419, above. Nevertheless, such a change must come from the Board. In *Katch Kan*, 362 NLRB No. 162 (2015) at fn. 2, the Board stated ". . . because the relief sought (out-of-pocket work related expenses) would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein."

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Long Island Associating for AIDS Care, Inc., Hauppauge, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining any rule prohibiting employees from discussing their wages and other terms and conditions of their employment with employees or non-employees and the media.

(b) Threaten discharge or discipline employees due to a violation of an overbroad and unlawful confidentiality policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or non-employees and the media.

(c) Discharge employees due to a violation of an overbroad and unlawful confidentiality policy statement prohibiting employees from discussing their wages and other terms and conditions of employment with employees or non-employees and the media.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind paragraphs 3 and 4 from the Respondent's Confidentiality Statement prohibiting employees from discussing their wages and other terms and conditions of their employment with non-employees and the media.

(b) Remove from its files and records all references to the Confidentiality Statement prohibiting employees from discussing wages and other terms of employment with non-employees and the media and notify employees that this had been done and that the prohibition in discussing wages and other terms and conditions of their employment with non-employees and the media is no longer in force.

(c) Within 14 days from the date of this Order, offer Marcus Acosta full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other employee emoluments, rights or privileges he previously enjoyed.

(d) Make Marcus Acosta whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(e) Compensate Marcus Acosta for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(f) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharge of Marcus Acosta, and, within 3 days thereafter, notify him in writing that this had been done and that his unlawful discharge will not be used against him in any way.

(g) Within 14 days after service by the Region, post at Respondent's facility at 60 Adams Avenue, Hauppauge, New York, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 days in conspicuous places including all places were notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent in the position employed by the Respondent at any time since March 1, 20115.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps the Respondent has taken to comply.

Dated: Washington, D.C. August 26, 2015

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate and maintain a Confidentiality Statement that prohibits you from discussing their wages and other terms and conditions of employment with employees or non-employees and the media.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT require and coerce you to sign a Confidentiality Statement as described above.

WE WILL NOT threaten to discipline or discharge or otherwise discriminate against you because you engage in protected concerted activities or to discourage you from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, rescind paragraphs 3 and 4 from our Confidentiality Statement.

WE WILL, within 14 days from the date of this Order, offer Marcus Acosta full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other employee emoluments, rights or privileges he previously enjoyed.

WE WILL make Marcus Acosta whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL compensate Marcus Acosta for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful discharge of Marcus Acosta, and WE WILL, within 3 days thereafter, notify him in writing that this had been done and that his discharge will not be used against him in any way.

LONG ISLAND ASSOCIATION FOR AIDS CARE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29–CA–149012 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273–1940.